

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

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BPB, LLC and HOMEBASE PROPERTIES, )  
LLC d/b/a "Munchies," )  
Plaintiffs )

v. )

JOSEPH J. MILLER, )  
Defendant )

v. )

RE/MAX INTEGRITY )  
REALTORS, INC., )  
Third-Party Defendant )

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Docket No. 04-30021-MAP

DEFENDANT'S REPLY TO COUNTERCLAIM OF THIRD-PARTY DEFENDANT

NOW COMES defendant Joseph J. Miller (hereinafter "Miller") who hereby replies to the counterclaim of third-party defendant RE/MAX Integrity Realtors, Inc. (hereinafter "RE/MAX") as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted, only insofar as the purchase and sale agreement (hereinafter "the Agreement") speaks for itself.
8. Admitted, only insofar as the Agreement speaks for itself.
9. Miller is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 9, and leaves RE/MAX to its proof thereof.

10. Admitted, insofar as Miller is alleged to have a right to recover the escrow funds.  
Denied insofar as Homebase Properties, LLC (hereinafter "Homebase") and BPB, LLC (hereinafter "BPB") are alleged to have a right to recover the escrow funds.

11. Miller is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 11, and leaves RE/MAX to its proof thereof.

WHEREFORE, Miller requests that RE/MAX's counterclaim be denied and dismissed.

AFFIRMATIVE DEFENSES

FIRST: RE/MAX has failed to state a claim for interpleader upon which relief can be granted, insofar as RE/MAX is in privity of contract with Homebase and/or BPB, and RE/MAX itself has a stake in or claim to the escrow funds.

SECOND: This Court lacks jurisdiction over the subject matter of the counterclaim, pursuant to 28 U.S.C. § 1332(a)(1), insofar as the amount in controversy is less than \$75,000 and insofar as Homebase, BPB and RE/MAX are all citizens of this Commonwealth.

THIRD: This Court lacks supplemental jurisdiction over the subject matter of the counterclaim, pursuant to 28 U.S.C. § 1367(b), insofar as the amount in controversy is less than \$75,000 and insofar as Homebase, BPB and RE/MAX are all citizens of this Commonwealth.

Dated: May 11, 2004

THE DEFENDANT

JOSEPH J. MILLER

By his attorneys,



Douglas J. Rose

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CERTIFICATE OF SERVICE

I, Douglas J. Rose, Esq., do hereby certify that I caused a true copy of the within Reply to be delivered by first class U. S. mail, postage prepaid, this 11<sup>th</sup> day of May, 2004 to David R. Cianflone, Esq., Cianflone & Cianflone, P.C., 59 Bartlett Avenue, Pittsfield, MA 01201 and Michael D. Hashim, Jr., Esq., Hashim & Spinola, 82 Wendell Avenue, Pittsfield, MA 01201.

  
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Douglas J. Rose

DJR:SLD